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No. 14620

United States Court of Appeals for the Ninth Circuit

SIDNEY HING LOWE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the District of Hawaii

FILED
MAR 10 1955
PAUL P. O'BRIEN,
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—2-18-55

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For the Petitioner, Sidney Hing Lowe:

W. Y. CHAR, ESQ.,
311 Liberty Bank Bldg.,
Honolulu, T. H.

For the Government:

LOUIS B. BLISSARD, ESQ.,
United States Attorney;

CHARLES B. DWIGHT, III,
Assistant U. S. Attorney,
Federal Building,
Honolulu, T. H.

Form N-405
United States Department of Justice
Immigration and Naturalization Service
(11-20-53)

No. 15,432

Original—(To be retained by Clerk of Court)

United States of America
Petition for Naturalization
(Under General Provision of the Immigration and Nationality Act)

To the Honorable the Judge, U. S. District Court of District of Hawaii at Honolulu, T. H.

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is: Sidney Hing Lowe.

(2) My present place of residence is: 2464 Nuuanu Ave., Honolulu, T. H.

(3) My occupation is: Merchant.

(4) I am 60 years old.

(5) I was born on November 25, 1893, in Canton, China.

(6) My personal description is as follows: Sex, male; complexion, dark; color of eyes, brown; color of hair, black; height, 6 feet 0 inches; weight, 124 pounds; visible distinctive marks, none; country of which I am a citizen subject, or national, China.

(7) I am married; the name of my wife is: Ivy

Leong Lowe, we were married on April 12, 1920, at Sydney, Australia, she was born at Cho Bin, Chungshan, China, on April 1, 1900, and entered the United States at Honolulu, T. H., on August 27, 1928, for permanent residence in the United States and now resides at Honolulu, T. H. (with me) and was naturalized on (Month) (Day) (Year) at (City or town) (State); certificate No.....; or became a citizen by.....

(8) I have 4 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

Henry Hing (m), Sydney, Australia, 1/23/21, Honolulu, T. H.; Rita Lowe (f), Sydney, Australia, 3/20/22, Honolulu, T. H.; Ellen Lowe (f), Sydney, Australia, 3/1/25, Honolulu, T. H.; Edward Hing (m), Honolulu, T. H., 8/23/29, Honolulu, T. H.

(9) My lawful admission for temporary residence in the United States was at Honolulu, T. H., under the name of Sidney Hing Low on January 29, 1926, on the SS Niagara and in 1928 I changed my status from visitor to treaty merchant administratively, as a permanent resident, pursuant to Article II of the Treaty of 1880 with China and the "rules of October 1, 1926, Governing the Admission of Chinese" enacted by the U. S. Immigration and Naturalization Service.

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of

whom or which at this time I am a subject or citizen.

(12) It is my intention to reside permanently in the United States.

(13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that Act.

(14) I am able to read, write and speak the English language (unless exempted therefrom).

(15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, or to perform noncombatant service in the Armed Forces of the United States, or to perform work of national importance under civilian direction (unless exempted therefrom).

(16) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since January 29, 1926, and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since January 29, 1926; and

during the past 5 years I have been physically present in the United States for at least one-half of that period.

(17) I have not heretofore made petition for naturalization.

(18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law.

(19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to (none desired). I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: So Help Me God.

/s/ SIDNEY HING LOWE,

(Full, true, and correct signature of petitioner, without abbreviation.)

Alien Registration No. 1,688,874.

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

(1) My name is: Hilda T. Grilho, my occupation is housewife, I reside at 942 Kalihi St., Honolulu, T. H., and

(2) Ny name is: Norman F. C. Tang, my occu-

pation is merchant, I reside at 1013 Second Ave., Honolulu, T. H.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least July 1, 1949; to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned; that the petitioner has been physically present in the United States for at least 57 months of that period; and that he has resided at Honolulu in the Territory of Hawaii continuously since at least July 1, 1949. I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

/s/ HILDA T. GRILHO,
(Signature of Witness.)

/s/ NORMAN F. C. TANG,
(Signature of Witness.)

(When Oath Administered By Clerk
or Deputy Clerk of Court)

Subscribed and sworn to before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of clerk of said court at Honolulu, T. H., this 1st day of July, A. D. 1954.

/s/ E. LANGWITH,
Deputy Clerk.

Form N-484-A
United States Department of Justice
Immigration and Naturalization Service
(Rev. 12-24-52)

Order No. 1130

Original

In the United States District Court,
District of Hawaii, Honolulu, T. H.

ORDER OF COURT

United States of America,
Territory of Hawaii—ss.

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 1130, sheets 1 to 3, dated November 15, 1954, presented in open Court this 15th day of November, A. D., 1954, It Is Hereby Ordered that each of the

said petitions, except those petitions listed below, be, and hereby is, denied.

It Is Further Ordered that the recommendation of the designated examiner is disapproved as to the petitions listed below, and each of said petitioners so listed having appeared in person in open Court this.....day of....., 19..., and each having taken the oath of allegiance required by the naturalization laws and regulations, It Is Hereby Ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America.

It Is Further Ordered that prayers for change of name listed below be and hereby are granted, except as to petition(s) No.....

Petition No.	Name of Petitioner	Change of Name
1	.....	.....
2	.....	.....

It Is Further Ordered that petitions listed below be continued for the reasons stated.

Petition No.	Name of Petitioner	Cause of Continuance
1	.....	.....
2	.....	.....

By the Court, this 15th day of November, 1954.

/s/ J. FRANK McLAUGHLIN,
Judge.

In the United States District Court
for the District of Hawaii

Petition No. 15,432

In the Matter of

SIDNEY HING LOWE, to be Admitted as a Citizen of the United States.

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Sidney Hing Lowe, by W. Y. Char, attorney for plaintiff, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final order entered in this proceeding on November 15, 1954, granting the motion to dismiss the plaintiff's Petition for Naturalization.

Dated: Honolulu, T. H., this 6th day of December, 1954.

SIDNEY HING LOWE,
Plaintiff,

By /s/ W. Y. CHAR,
His Attorney.

[Endorsed]: Filed December 8, 1954.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents:

That we, Sidney Hing Lowe, as Principal, and James K. I. Hong and J. T. Lum, as sureties, are held and firmly bound unto the United States Court of Appeals for the Ninth Circuit in the full sum of Two Hundred Fifty Dollars ($250.00) for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, the United States District Court for the District of Hawaii has entered an Order granting the motion to dismiss the plaintiff's Petition for Naturalization, and

Whereas, Notice of Appeal has been given to the United States Court of Appeals for the Ninth Circuit to secure a reversal of said Order,

Now, therefore, the condition of this obligation is such that if said appeal is dismissed or said Order is affirmed, and if said Plaintiff shall pay all costs as the said United States Court of Appeals for the Ninth Circuit may award, then this obligation shall be void, otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above-bounden Principal

and Sureties have hereto affixed their hands this 29th day of November, 1954.

/s/ SIDNEY HING LOWE,
Principal.

/s/ JAMES K. I. HONG,

/s/ J. T. LUM.

Territory of Hawaii,
City and County of Honolulu—ss.

James K. I. Hong and J. T. Lum, being first duly sworn on oath, depose and say: That they are the James K. I. Hong and J. T. Lum named as Sureties and who filed the foregoing Bond and that they are worth the sum of Two Hundred Fifty Dollars ($250.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

Subscribed and sworn to before me this 29th day of November, 1954.

[Seal] /s/ JEANETTE Y. L. LEE,
Notary Public, 1st Judicial Circuit, Territory of Hawaii.

My commission expires: September 25, 1957.

[Endorsed]: Filed December 8, 1954.

In the United States District Court
for the District of Hawaii

Petition No. 15,432

In the Matter of

SIDNEY HING LOWE, to be Admitted as a Citizen of the United States.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Appearances:

For Petitioner:
NICHOLAS W. Y. CHAR, ESQ.

For Government:
GEORGE Z. REICH, ESQ.,
Naturalization Examiner.

November 15, 1954

The Clerk: Petition 15,432, Sidney Hing Lowe.

Mr. Reich: If the Court please, there is a question of law. I believe Mr. Char will stipulate the facts.

The Court: That's correct, Mr. Char, that you will, depending on how he words it? You are in the mood to stipulate to it if he words it correctly?

Mr. Char: Yes.

Mr. Reich: This is the petition of Mr. Sidney Hing Lowe.

The Court: Sidney what?

Mr. Reich: Sidney Lowe, L-o-w-e, a native and

citizen of China, who arrived in the United States on January 29, 1926, at the port of Honolulu on the SS Niagara. And at that time he was admitted temporarily as a visitor. This petition, if the Court please, at Mr. Char's direction was prepared so that allegation number 9 thereof would show lawful admission for temporary residence in the United States, in Honolulu, T. H. It being a jurisdiction requirement that an applicant for naturalization be admitted for permanent residence, I move that the petition be dismissed on the ground that it does not set up a prima facie case.

The Court: Well, if he came in as a visitor in 1926 and he is still here——

Mr. Reich: I would like to call the Court's attention to a further allegation, "and in 1928 I changed my status from visitor to treaty merchant administratively." That is the allegation as was set in here by Mr. Char. Since it doesn't allege lawful admission for permanent residence I move for the dismissal of the petition.

The Court: Very well. That is the motion. Is there agreement as to the facts? Do you agree that the facts as stated by Mr. Reich are correct?

Mr. Char: Yes, changed administratively.

The Court: Yes or no?

Mr. Char: Well, in the short brief form, your Honor. I would like to make a further statement.

The Court: Well, what is wrong with the facts as he stated them? What is left out?

Mr. Char: That he changed his status in 1928 administratively.

The Court: Up to that point the facts are correct?

Mr. Char: Yes, under the terms of the Treaty, of the Chinese Treaty of 1880——

The Court: Chinese Treaty?

Mr. Char: The Chinese Treaty with the United States or between China and the United States of 1880. And also in pursuance to——

Mr. Reich: If the Court please, that goes into argument on the law rather than as to the merits of this motion. The petition falls because it doesn't contain the necessary allegation.

The Court: Well, the reason why and under what provision of law he may have been allowed administratively to change his status in 1928 to that of a treaty merchant is interesting but it is not a fact. The fact is that in that year he was allowed to change his status——

Mr. Char: Yes, your Honor.

The Court: ——from visitor's to treaty merchant.

Mr. Char: Right.

The Court: That is all we need to know at the moment. How and why is another question. There is no dispute but what he did it.

Mr. Char: That's right.

The Court: So is there agreement now as to the facts?

Mr. Char: Yes, your Honor.

The Court: Alright. Now, the motion to dismiss your petition because you do not allege—you being the petitioner—that he was admitted for permanent

residence—and only persons admitted for permanent residence are eligible to become citizens if they meet other requirements——

Mr. Char: But the fact is that if he changed his status——

The Court: Wait a minute. That is the motion.

Mr. Char: Yes, sir.

The Court: I want to hear your argument.

(Arguments presented.)

Mr. Char: In his entry in 1926 he was admitted as a visitor. There is no question about that, which, as I say, the fact is true.

The Court: But where it calls for an allegation that he was admitted for permanent residence what do you say there?

Mr. Reich: The allegation "permanent" is stricken out and the word "temporary" is in.

Mr. Char: At the time he came in he was admitted for temporary purposes but when he changed his status then this——

The Court: Well, if you believe what you say, why didn't you amend your petition?

Mr. Char: I wish to amend it.

The Court: Well, you are conceding the motion as good, then?

Mr. Char: Yes, your Honor, for the time being, your Honor.

The Court: Now, you wish to amend?

Mr. Char: Right, your Honor.

The Court: Alright. Motion granted leave to amend granted. Ten days. Or do you wish to do it

right now? You will have to file a whole new petition. Will he not?

Mr. Reich: I think probably, or submitting a motion for amendment, written motion for amendment.

The Court: Alright. To have the record straightened out, you may do it orally on the record at this time if you so desire and are ready.

Mr. Char: I am ready to argue the case.

The Court: I know but the case you are arguing isn't the case that was made out by the pleadings. Let us keep the horse before the cart. Do you want to amend orally and have it reduced to writing later?

Mr. Char: If your Honor please, may I have the privilege——

The Court: Alright. You wish to amend what portion of the petition?

(Discussion off the record.)

The Court: You simply wish to delete the word "temporary" and insert the word "permanent," do you not, or leave the wording as to the allegation in print there stand?

Mr. Char: Yes, your Honor.

The Court: So that it shows affirmatively that your petitioner alleges that he was admitted for permanent residence. Are there any other allegations that are needed to support that conclusion?

(Further argument.)

The Court: Well, I think you had better take it up to the Ninth Circuit Court and tell them about it, because I am not convinced because at that time

there was a new law on the books, the Act of 1924. Therefore, I think your argument in the case upon which you rely, United States vs. Kwai Tim Tom, is distinguishable and I think the case cited by the examiner, United States vs. Kwai Shun You from the Ninth Circuit earlier in date is controlling, and therefore, your petition as amended is denied.

Reporter's Certificate

I, Albert Grain, Official Reporter, United States District Court for the District of Hawaii, do hereby certify that the foregoing is a true and correct transcript of my shorthand notes of the proceedings had in the matter of the petition of Sidney Hing Lowe, to be admitted as a citizen of the United States.

January 3, 1955.

/s/ ALBERT GRAIN.

[Endorsed]: Filed January 3, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk, U. S. District Court for the District of Hawaii, do hereby certify that the record on appeal in the above-entitled cause consists of a statement of the names and

addresses of attorneys of record and of copies of the pleadings and other papers as hereinbelow listed and indicated:

Petition for Naturalization.

Motion for Amendment of Petition and Order of Court.

Naturalization Petitions Recommended to be Denied.

Order of Court.

Reporter's Transcript of Proceedings.

Notice of Appeal to the United States Court of Appeals for the Ninth Circuit Under Rule 73(b).

Bond on Appeal.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 11th day of January, A.D. 1955.

/s/ WM. F. THOMPSON, JR.,
Clerk.

[Endorsed]: No. 14620. United States Court of Appeals for the Ninth Circuit. Sidney Hing Lowe, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed January 12, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED ON APPEAL

Plaintiff-Appellant above named, sets forth the following points on which he intends to rely on appeal:

1. The Court erred in granting the motion to dismiss the Petition for Naturalization of the Plaintiff upon the ground that his change of status from a vistor to a treaty merchant administratively in 1924, attributed to him permanent residence for for the purpose of naturalization.

2. The Court erred in granting the motion to dismiss the Petition for Naturalization of the Plaintiff in that the Court failed to hold that since he changed his visitor's status to a treaty merchant under the terms of the Treaty with China of 1880, without making a new entry to the United States in 1928, his treaty status, predicated solely on the terms of the Treaty, and not effected by the Act of 1924, attribtued to him permanent residence for the purpose of naturalization.

By reason of said errors, the Order should be reversed.

Dated: Honolulu, T. H., this 21st day of December, 1954.

SIDNEY HING LOWE,
Plaintiff;
By /s/ W. Y. CHAR,
His Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed January 13, 1955.